

COMPLIANCE BOARD OPINION NO. 00-3
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April 20, 2000

Mr. Richard Marvin

The Open Meetings Compliance Board has considered your complaint that the Montgomery County Board of Social Services violated the Open Meetings Act in connection with meetings on January 10, 2000 and December 6, 1999. For the reasons stated below, the Compliance Board has concluded that the Board of Social Services was authorized by law to meet in closed session on both occasions but, with respect to the January 10 meeting, failed to comply with certain of the Act's procedural requirements.

I

Complaint and Response

Your complaint alleged that the Board of Social Services violated the Act by failing to comply with the Act's procedures prior to closing the January 10 meeting and by conducting impermissible discussions in that closed session. Specifically, your complaint alleged that the Board of Social Services failed to give "reasonable notice" of the meeting and its intent to close a portion of it; failed "to conduct a recorded vote on the closing of the session"; failed "to make a written statement of the reason for closing the meeting ... before the closing"; and failed, as of February 7, 2000, "to have prepared written minutes of the closed session." In addition, your complaint stated as follows about the nature of the discussion during the closed session:

The Social Services Director first claimed that the Board was not subject to the Open Meetings Act, then said it was being closed to discuss matters of protocol. I referred the Director to the County Attorney. The County Attorney's office reportedly advised the Director not to close the meetings for any of the reasons they discussed. The Board closed the meeting on January 12 to discuss matters of a personal nature. It reported afterwards in the minutes that it was being closed to discuss a personnel matter. A controversial matter was on the agenda at the closed session. I do not believe that the Board limited its discussion to an appropriate personnel matter.

Finally, your complaint alleged that the Board of Social Services also violated the procedural requirements of the Act in connection with the closed portion of a meeting on December 6, 1999. With respect to this meeting, unlike that of January 10, your complaint indicated that the topic of discussion at the closed session was permissible under the Act.

In a timely response on behalf of the Board of Social Services, Ann T. Windle, Esquire, Assistant County Attorney, acknowledged the Board of Social Services had not prepared a written statement prior to the closing of the January 10 meeting but stated that the Board in other respects complied with the procedural requirements of the Act. Specifically, notice of Board meetings is posted in the Executive Office Building and, with respect to the January 10 meeting, an agenda reflected the intention to have a closed session. This agenda, Ms. Wandle noted, was also sent to you prior to the meeting. The chair of the Board, in public session, conducted a vote on the proposed closure, which was approved unanimously.

The response indicated that “no minutes [were] made of the closed session of the meeting due to the sensitive nature of the topics to be discussed.” These topics involved “the pending resignation of ... one Board member and personal medical information regarding another member.” The Board’s response contended that the Act’s exception for specific personnel matters allowed this discussion to be conducted in closed session. According to the response, “during the closed portion of the session, no topics beyond the two identified prior to the closing of the meeting were discussed.”

With respect to the December 6, 1999 meeting, Ms. Windle stated as follows:

Prior to the Board’s December 6, 1999 open meeting, the Board met in executive session to discuss the annual evaluation of [the County Social Services Officer]. The Board’s intent to meet in Executive session prior to the open session was announced in the agenda for that meeting.... This Executive session was recorded in the minutes of that meeting.

Ms. Windle contended that the closed session constituted an executive function of the Board, to which the Open Meetings Act was not applicable.

II

Analysis

A. *January 10 Meeting*

1. Basis for closing

The Compliance Board concludes that the Board of Social Services had a sufficient basis under the Act to close the session. The Compliance Board agrees that discussion of a member's possible resignation and another member's medical problems, assuming the latter had some impact on job performance, may be discussed in closed session pursuant to §10-508(a)(1), which addresses specific personnel matters.¹ On behalf of the Board of Social Services, Ms. Windle stated that "no topics beyond the[se] two ... were discussed." Given this representation, the Compliance Board finds that the Board of Social Services complied with the Act by limiting its discussion in closed session to matters covered by this exception.

2. Notice

If notice of the Board's January 10 meeting was posted in the Executive Office Building reasonably prior to the meeting, that action satisfied the Act's requirements concerning the time and place of a meeting notice. *See* §10-506 of the State Government Article.

With regard to the content of the notice, §10-506(b)(3) states that the notice shall, "if appropriate, include a statement that a part or all of a meeting may be conducted in closed session." The phrase "if appropriate" refers to the possibility that, when a notice is prepared, the public body (or its presiding officer) might be able to anticipate that a portion will be closed. In that circumstance, the notice should so indicate. While the response from the Board of Social Services makes clear that the agenda for the January 10 meeting included a reference to an "executive" (*i.e.*, closed) session, it is not clear to the Compliance Board whether the notice posted in the Executive Office Building included the agenda. If so, the Board of Social Services complied with the notice requirement of the Act; if not, the Board should have updated its posted notice to reflect its anticipated closed session.

¹ To the extent that the discussion of a member's medical situation involved his or her personal circumstances, rather than an effect on job performance, the Open Meetings Act did not apply to that discussion and so it could be held in private without violating the Act. *See* Compliance Board Opinion 95-7, *reprinted in* 1 *Official Opinions of the Open Meetings Compliance Board* 129 (1995).

3. Closing procedures

As the Board of Social Services acknowledged, it did not comply with the requirement in §10-508(d)(2)(ii) that a written statement be prepared by the presiding officer containing “the reason for closing the meeting, including citation of the authority under this section, and a listing to the topics to be discussed.” Hence, the Act was violated.

4. Minutes

With respect to minutes when a closed session is held, the Open Meetings Act contains two requirements. The first is that written minutes of a closed session must be prepared. §10-509(b). The minutes are to reflect the items considered, any action taken, and any recorded vote. §10-509(c). Although the minutes of a closed session must be prepared in this manner, they are generally sealed and closed to public inspection. §10-509(c)(3)(iii).²

A public body may not forgo the preparation of minutes, as the Board of Social Services apparently did, merely because a closed session deals with sensitive matters. To the extent that the minutes reflect sensitive topics that justified closing the meeting, the minutes are protected from public inspection. Because the Board of Social Services did not prepare minutes for the January 10 closed session, it violated this portion of the Act.

The Act’s second requirement concerning minutes when a closed meeting is held deals with disclosure of some facts about the closed meeting. That is, the minutes of the next open session following a closed session are to include:

- (i) a statement of time, place, and purpose of the closed session;
- (ii) a record of the vote of each member as to closing the session;
- (iii) a citation of the authority under this subtitle for closing the session; and
- (iv) a listing of the topics of discussions, persons present, and each action taken during the session.

² The circumstances under which minutes of a closed meeting may be disclosed are specified in §10-509(c)(4).

The Compliance Board was provided with a copy of the minutes of the open portion of the January 10 meeting, which contained the following concerning the closed session: “The meeting was closed, by unanimous vote, to discuss a pending resignation of a Board member and to provide personal information concerning another Board member.” While this statement amounts to “a listing of the topic of discussion,” it does not contain the other elements required by §10-509(c)(2). In this respect, the Board of Social Services failed to comply with the Act.

B. December 6 Meeting

Under Article 88A, §13(b)(5) of the Maryland Code, the Board of Social Services is required to conduct an annual evaluation of the County Social Services Officer. When it meets to do so, the Board is implementing this existing statutory requirement. Such a discussion is an “executive function,” as defined in §10-502(d)(1).³ Therefore, the Open Meetings Act did not apply to this portion of the December 6 meeting. §10-503(a)(1)(i).

III

Conclusion

The Open Meetings Compliance Board finds that the Montgomery County Board of Social Services did not violate the Open Meetings Act by holding closed sessions at meetings on January 10, 2000 and December 6, 1999. The Board of Social Services did violate the Act, however, by failing to comply with the Act’s requirements concerning a written statement and minutes with respect to the January 10 meeting.

OPEN MEETINGS COMPLIANCE BOARD

Walter Sondheim, Jr.
Courtney McKeldin
Tyler G. Webb

³ “‘Executive function’ means the administration of ... a law of the State”